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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/474,435

12/28/1999

Yongwei Cao

16517.044/15473B

2233

28381

7590

10/16/2006

ARNOLD & PORTER LLP
ATTN: IP DOCKETING DEPT.
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WASHINGTON, DC 20004-1206

EXAMINER

SALMON, KATHERINE D

ART UNIT

PAPER NUMBER

1634

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

20061002

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The timely submission under 37 CFR 1.129(a) filed on 7/26/2006 is not fully responsive to the prior Office action because the applicant is required to further elect for Group 1: a SPECIFIC sequence for the first purified nucleic acid molecule from SEQ ID No. 81307-195836; a SPECIFIC sequence for the second purified nucleic acid molecule from SEQ ID No. 81307-195836, a SPECIFIC promoter region for the transformed cell from SEQ ID No. 1-81306, a SPECIFIC gene sequence from SEQ ID NO. 138061-195836, a SPECIFIC combination of nucleic acid sequences from SEQ ID No. 38061-195836 for the collection of nucleic acids, and a SPECIFIC primer pair sequence from SEQ ID No. 138061-195836 (p. 6 of the Requirement for restriction 5/01/2006). This further restriction is NOT an election of species. Nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequences are presumed to represent an independent and distinct invention, subject to restriction requirement pursuant to 35 USC 121 and 37 CFR 1.141. By statute, "[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." 35 U.S.C. 121. Pursuant to this statute, the rules provide that "[i]f two or more independent and distinct inventions are claimed in a single application, the examiner in his action shall require the applicant...to elect that invention to which his claim shall be restricted." 37 CFR 1.142(a). See also 37 CFR 1.141(a). It is noted that searching more than one of the claimed patentably distinct chromosome and variant base positions represents a serious burden for the office.

In the reply applicants elected SEQ ID No. 5272, which is not in the combination for the specific first or second nucleic acid molecule. The claims, as written, cannot be examined with regard to the elected SEQ ID because the election of a specific nucleic acid molecule from SEQ ID No. 81307-195836 has not been made.

Since the submission appears to be a bona fide attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a). If a notice of appeal and the fee set forth in 37 CFR 1.17(e) were filed prior to or with the payment of the fee set forth in 37 CFR 1.17(r), the payment of the fee set forth in 37 CFR 1.17(r) by applicant is construed as a request to dismiss the appeal and to continue prosecution under 37 CFR 1.129(a). The appeal stands dismissed.

J. Goldberg
JEANINE A. GOLDBERG
PRIMARY EXAMINER

10/3/06

Katherine Salmon
Katherine Salmon
Examiner
Art Unit 1634